

**In the United States Court of Federal Claims**  
**OFFICE OF THE SPECIAL MASTERS**

Filed: May 28, 2019

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| * * * * *                                     | * |  |
| ERIC P. CABRERA <i>and</i> CAROL              | * |  |
| CABRERA, <i>natural parents and guardians</i> | * |  |
| of L.C., a minor,                             | * | UNPUBLISHED                            |
|   | * |  |
| Petitioners,                                  | * | No. 13-598V                            |
|   | * |  |
| v.  | * | Special Master Gowen                   |
|   | * |  |
| SECRETARY OF HEALTH                           | * | Damages; Off-Table Injury;             |
| AND HUMAN SERVICES,                           | * | Diphtheria-Tetanus-Acellular Pertussis |
|   | * | ("DTaP"); Juvenile Idiopathic          |
| Respondent.                                   | * | Arthritis ("JIA").                     |
| * * * * *                                     | * |  |

Sylvia Chin-Caplan, Law Office of Sylvia Chin-Caplan, Boston, MA, for petitioners.  
Darryl R. Wishard, United States Department of Justice, Washington, DC, for respondent.

**DECISION ON DAMAGES<sup>1</sup>**

On August 21, 2013, Eric and Carol Cabrera ("petitioners"), on behalf of their minor child L.C., filed a petition under the National Vaccine Injury Compensation Program ("Vaccine Act" or the "Program").<sup>2</sup> Petition (ECF No. 1). Petitioners alleged that as a result of receiving a diphtheria-tetanus-acellular pertussis ("DTaP") vaccine on August 30, 2010, L.C. developed juvenile idiopathic arthritis ("JIA"). *Id.* at ¶ 3-4. Respondent recommended against awarding compensation. Respondent's Report (ECF No. 27). Each party submitted expert reports. An entitlement hearing was held on November 19, 2015. Transcript (ECF No. 73). Following the

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<sup>1</sup> Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), because this opinion contains a reasoned explanation for the action in this case, I am required to post it on the website of the United States Court of Federal Claims. The court's website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. **This means the opinion will be available to anyone with access to the Internet.** Before the decision is posted on the court's website, each party has 14 days to file a motion requesting redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). An objecting party must provide the court with a proposed redacted version of the opinion. *Id.* **If neither party files a motion for redaction within 14 days, the opinion will be posted on the court's website without any changes.** *Id.*

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to 34 (2012). All citations in this opinion are to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

submission of post-hearing briefs, on January 12, 2017, the undersigned issued a ruling that petitioners had established entitlement to compensation based on a theory of causation-in-fact. Ruling on Entitlement (ECF No. 82).

On May 21, 2019, respondent filed a proffer on an award of compensation, which indicates petitioners' agreement to compensation on the terms set forth therein. Proffer (ECF No. 153). The proffer is attached hereto as Appendix A.

**Consistent with the terms of the proffer, I hereby award the following compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a):**

- 1) A lump sum payment of \$223,697.00 (*representing \$175,000.00 for past and future pain and suffering and \$48,697.00 for projected vaccine-related expenses*)**, via a check payable to petitioners as guardian(s)/ conservator(s) of the estate of L.C., for L.C.'s benefit;
- 2) A lump sum payment of \$1,934.72 (*for past unreimbursable expenses*)**, via a check payable to petitioners; and
- 3) A lump sum payment of \$5,289.41 (*for satisfaction of a State of Colorado Medicaid lien for payment of vaccine-injury medical expenses for L.C.*)**, via a check payable jointly to petitioners and the Colorado Department of Health Care Policy and Financing, Third Party Liability & Recoveries Section, 1570 Grant Street, Denver, CO 80203-1818, Attn: Erika L. Herrera, State ID No.: P493554.

Accordingly, the Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with the terms of the proffer and this opinion.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Thomas L. Gowen**  
Thomas L. Gowen  
Special Master

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<sup>3</sup> Entry of judgment is expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).



(1) past and future pain and suffering; (2) projected vaccine-related expenses; and, (3) past unreimbursed expenses.

Respondent proffers that, based on the Special Master's ruling on entitlement and the evidence of record, petitioners should be awarded the following damages:

**To petitioners, as guardian(s)/conservator(s) of the Estate of LC, for LC's benefit:**

|                                     |              |
|-------------------------------------|--------------|
| Past and Future Pain and Suffering: | \$175,000.00 |
| Projected Vaccine-Related Expenses: | \$ 48,697.00 |

**\$223,697.00**

**To petitioners, Eric P. Cabrera and Carol Cabrera:**

|                               |                           |
|-------------------------------|---------------------------|
| Past Unreimbursable Expenses: | <b><u>\$ 1,934.72</u></b> |
|-------------------------------|---------------------------|

In addition, petitioners filed evidence from the State of Colorado confirming a Medicaid lien for payment of vaccine-injury medical expenses for LC, in the amount of \$5,289.41.

Respondent proffers that, based on the Special Master's ruling in entitlement and the evidence of record, petitioners should be awarded **\$5,289.41**, in the form of a check payable jointly to petitioners and the Colorado Department of Health Care Policy and Financing, State I.D. No. P493554.<sup>2</sup> These amounts represent all elements of compensation to which petitioners would be entitled under 42 U.S.C. § 300aa-15(a). Petitioners agree.

**III. Form of the Award**

Respondent recommends that compensation provided to petitioners be made through: (1)

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<sup>2</sup> The parties have no objection to the amount of the proffered award of damages. Assuming the Special Master issues a damages decision in conformity with this proffer, the parties waive their right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Special Master's January 12, 2017 ruling on entitlement.

a lump sum payment of \$223,697.00, via a check to petitioners as guardian(s)/conservator(s) of the Estate of LC, for LC's benefit; (2) a lump sum payment of \$1,934.72, via a check payable to petitioners; and, (3) a lump sum payment of \$5,289.41, via a check payable jointly to petitioners and the Colorado Department of Health Care Policy and Financing, Third Party Liability & Recoveries Section, 1570 Grant Street, Denver, CO 80203-1818, Attn: Erika L. Herrera, State I.D. No: P493554.<sup>3</sup> Petitioners agree.

Respectfully submitted,

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Dated: May 21, 2019

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<sup>3</sup> Should LC die prior to entry of judgment, respondent would oppose any award for projected vaccine-related expenses and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.